***THE HON'BLE MR JUSTICE V.V.S.RAO**

\+ WRIT PETITION Nos. 15757 OF 2005 AND 15001 OF 2006

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% Dated 17.11.2006

Khaja Naseeruddin and others

… Petitioners.

VERSUS

$ The Commissioner, Survey, Settlement and Land Records, Hyderabad and others.

… Respondents.

! Counsel for Petitioners:
W.P.No.15757 of 2005: Sri M.V.Durga Prasad
W.P.No.15001 of 2006: Sri B.Vijaysen Reddy

^Counsel for Respondents:
W.P.No.15757 of 2005:
Counsel for Respondent No.2: G.P. for Revenue (General)
Counsel for Respondent No.4: G.P. for Home
Counsel for Respondent No.5: Standing Counsel for MCH

W.P.No.15001 of 2006:
Counsel for Respondent No.2: G.P. for Revenue (General)
Counsel for Respondent No.3: Sri M.S.R.Subrahmanyam

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? Cases referred

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.15757 OF 2005 AND 15001 OF 2006

DATED NOVEMBER, 2006

BETWEEN:

Sri Khaja Naseeruddin and others

… Petitioners

AND

The Commissioner, Survey, Settlement and Land Records, Hyderabad and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.15757 OF 2005 AND 15001 OF 12006

COMMON ORDER:

These two writ petitions are filed by the sons of late Raza Ali through their General Power of Attorney (GPA). In the first writ petition, they assail the order of the Commissioner, Survey, Settlement and Land Records, Hyderabad, the first respondent (hereafter called, the Commissioner), dated 13.06.2005 as well as order of the Deputy Director, Survey and Land Records (hereafter called, Deputy Director) as illegal, arbitrary and without jurisdiction. The Commissioner by his order directed the Deputy Director to keep the demarcation of Jubilee Hills Municipality (JHM) plot No.8A in abeyance and further ordered to consider the application of third respondent for demarcation of JHM plot No.8. The Commissioner also indicated that the Deputy Director should first reject the request of third respondent and then do the demarcation of plot No.8A or take up demarcation of both the plots simultaneously. The Deputy Director also informed that demarcation of plot No.8A is kept in abeyance till further orders as demarcation of plot No.8 is pending with the Mandal Revenue Offier, Shaikpet (MRO). The second writ petition is filed alleging that while the first writ petition is pending, the MRO came to the property of petitioners and demolished major portion of the compound wall and therefore, they seek a writ of Mandamus declaring such action of the MRO as illegal and arbitrary with consequential direction not to interfere with the peaceful possession. Parties are referred to as they are arrayed in W.P.No.15757 of 2005.

The brief fact of the matter is as follows. JHM in Shaikpet was established in 1942 and was in existence still in 1948. The then Ruler of Hyderabad State, the Nizam, prepared a layout consisting of 161 plots in

survey No.403 admeasuring Ac.2,967.00 guntas. During that regime, plots were sold to different persons but their names were not registered in the revenue records. The land continued to be Government land. The Government of Andhra Pradesh, by Memo No.3933/Q2/64/17 Revenue Department, dated 06.12.1967 recognised title of the forty-one (41) allottees, who had paid the amount to JHM. The Government also ratified the action of the District Collector, Hyderabad, in rejecting the claim of others on the ground that the consideration was not paid to Sarf-e-Khas[1] Treasury and further directed to demarcate and implement all the 41 recognised plots by issuing supplementary sethwar[2].

During 1964-1970, Town Survey was conducted as per A.P.Survey and Boundaries Act, 1923 (the Survey Act, for brevity). Notification under Section 13 of the said Act was published in Gazette No.41, dated 06.08.1977. However, the 41 recognised plots of JHM were not implemented in town survey records. They were surveyed as part of Government land. Thereafter, whenever a person among 41 allottees approached the second respondent, demarcation work was taken up followed by issue of supplementary sethwar. In such a manner, 34 plots were implemented in town survey records. The petitioners/purchasers were allotted plot No.8A of JHM in survey No.403 of Shaikpet village (Road No.2, Banjara Hills). They approached the District Collector for 'No Objection Certificate' (NOC), which was denied. They appealed to Chief Commissioner of Land Administration, who by order, dated 31.10.2002, remanded the matter to the District Collector. The latter subsequently on 30.03.2005 issued clearance to the extent of 2,045 square meters in plot No.8A for the purpose of considering sanction of building plan by Municipal Corporation of Hyderabad (MCH). On an application made by the petitioners, MCH granted permission on 29.06.2005 for construction of compound wall.

At that stage, the petitioners made an application for demarcation of plot No.8A of JHM. It appears third respondent also made similar application for demarcation of plot No.8 alleging it to be part of JHM plots. The Inspector of Survey, a subordinate of second respondent, issued notices to petitioners and third respondent on two occasions. The third respondent allegedly failed to produce documentary evidence and title. Therefore, the boundaries of plot No.8A alone were demarcated and survey was completed. A Panchanama was also prepared on 31.05.2005. However, on 08.06.2005 the second respondent issued Memo to the petitioners informing that the demarcation of plot No.8A is kept in abeyance till further orders as it is noticed that demarcation of plot No.8 should have been completed prior to demarcation of plot No.8A and that demarcation of plot No.8 is still pending with MRO. It appears even

before the issue of such Memo by second respondent, third respondent approached first respondent by submitting a petition on 03.06.2005. This was purportedly treated as an appeal and first respondent passed an interlocutory order directing second respondent to keep demarcation of Plot No.8A in abeyance. He was asked to take further action as indicated in the said letter, dated 13.06.2005. Aggrieved by two orders - one issued by the first respondent and another issued by second respondent, writ petition No.15757 of 2005 is filed.

The second respondent has filed detailed counter affidavit justifying the two impugned orders keeping the demarcation of plot No.8A in abeyance. The allegation that the respondents 1 and 2 acted with malafide intention is denied. The second respondent asserts that plot No.8A is JHM plot recognised by the Government in Memo, dated 06.12.1967, whereas plot No.8 is an unrecognised plot. It is also averred that plot No.8 claimed by third respondent company is subject matter of L.G.C.No.140 of 1989 pending before the Special Court in A.P.Land Grabbing (Prohibition) Act, 1982. It is also further alleged that plot No.8 allegedly measuring Acs.3.20 guntas overlaps unrecognised plot Nos.9, 8D and 8A and survey No.129/73 which is Government land.

The third respondent filed counter affidavit opposing the writ petition. In brief, it is their case that survey and demarcation of plot No.8A pending consideration of appeal filed by third respondent before the first respondent cannot be given effect to. The third respondent purchased plot No.8 of Jubilee Hills Development Plan of 1355F under a registered sale deed, dated 24.10.1961 from Shahid Ali Khan, its previous owner. The eastern boundary of plot No.8 is plot No.8A admeasuring Ac.2.34 guntas. When the owner of plot No.10, Smt.Jayamala Reddy tried to interfere with the third respondent's possession, they filed O.S.No.107 of 1968 on the file of the Court of the Additional Chief Judge, City Civil Court, Hyderabad, against her and the vendor of the third respondent as well as State of Andhra Pradesh. The suit was decreed on 10.03.1975 upholding the title of third respondent and a direction was given to the State of Andhra Pradesh to enter the name of the third respondent as owner of the plot. Smt.Jayamala Reddy filed C.C.C.A.No.105 of 1975, which was dismissed by Division Bench of this Court on 13.10.1982. Special Leave Petition was also dismissed on 18.02.1991 by Supreme Court. Thereafter, Government of Andhra Pradesh filed L.G.C.No.140 of 1989 before the civil Court in respect of Ac.2.00 guntas, which forms part of plot No.8. The said L.G.C. was decided in favour of third respondent on 16.07.1998. Smt.Jayamala Reddy filed L.G.C.No.140 of 1998 claiming part of plot No.8. The same was also dismissed on 15.02.2005. The third respondent also denies the title of the petitioners to plot No.8A. It is alleged that the father of the petitioners purchased plot No.8A in the

name of his four minor sons (including the petitioners herein), that later, father sold away the property under registered document No.2208 of 1358F, dated 12 Amardad 58 Fasli to Syed Mohammad Hashim Saheb for sale consideration of Rs.1,500 O.S., that the said Syed Mohammad Hashim Saheb sold plot No.8A to V.Subba Rao, S/o Sreeramulu in 1955, that later V.Satyavathi, W/o Subba Rao applied for layout, got approval from MCH on 20.08.1968 for construction of a room, and that in 1972, Satyavathi got a revised plan approved for plot No.8A, admeasuring Ac.2.34 guntas. Therefore, the third respondent alleges that petitioners have no title to claim plot No.8 and with a view to grab a portion of plot No.8 have sought survey and demarcation of plot No.8A. It is also alleged that as per Government Memo, dated 06.12.1967 only the original allottees can claim demarcation of survey and the petitioners' GPA who purchased under agreement of sale cum General Power of Attorney has been set up to grab 2,045 square meters of eastern portion of plot No.8 lying to the west of compound wall existing since several decades spreading plot Nos.8 and 8A. When the second respondent issued notice, dated 25.05.2005, third respondent produced documents on 28.05.2005 within three days, which was acknowledged by the second respondent and in spite of the same, without conducting survey of demarcation of plot No.8, the Inspector of Survey completed fixing boundaries of plot No.8A in a mischievous manner ignoring objections of third respondent in violation of principles of natural justice. Therefore, third respondent filed appeal to the first respondent as indicated in notice dated 28.05.2005 itself issued by Deputy Director of Survey and Land Records, Hyderabad.

In W.P.No.15001 of 2006, petitioners allege that on 05.07.2006, second respondent, namely, the Mandal Revenue Officer, without notice came to the petitioners' property and demolished major portion of compound wall. Aggrieved by which, the petitioners seek a writ of Mandamus directing the MRO not to interfere with the peaceful possession and enjoyment of the property of the petitioners. In his counter affidavit, MRO *inter alia* stated that NOC was issued in favour of P.Malleswara Rao, GPA of Khaja Yousufuddin to an extent of 2,045 square meters in plot No.8A of JHM. The allegation that the MRO demolished the compound wall is denied as baseless and false.

Learned counsel for the petitioners in W.P.No.15757 of 2005 contends that the impugned order passed by the Commissioner is illegal and without jurisdiction. According to the learned Counsel, the Deputy Director issued orders on 08.06.2005 on the telephonic instructions of the Commissioner and thereafter Commissioner passed orders on 13.06.2005, which is improper. No notice was issued to the petitioners while passing the order and therefore, the same is void. **Per contra**,

learned Counsel for the third respondent company and learned Assistant Government Pleader for Revenue (General-T) submit that though plot No.8A is recognised plot of JHM, survey and demarcation of the same could not have been taken up without conducting survey of plot No.8, which is adjacent to plot No.8A. For this reason, while entertaining the appeal filed by the third respondent, first respondent passed orders on 13.06.2005 keeping the demarcation of plot No.8A in abeyance. He also submits that the matter is still pending with the first respondent and therefore, no prejudice would be caused to the petitioners to approach the first respondent for seeking redressal. Learned counsel for the third respondent also points out that while issuing notice, the Deputy Director of Survey and Land Records in the office of the second respondent also advised the petitioners as well as the third respondent to file appeal to the higher authorities after completion of demarcation and therefore, the appeal filed by the third respondent is proper. The impugned order is in the nature of interlocutory order and therefore, no interference is called for.

When the arguments commenced in these two cases, the Court entertained a doubt as to whether the Survey Act can be made applicable to survey of residential plots in towns, municipalities and municipal corporations and other urban areas. The matter was adjourned more than half a dozen times to enable learned counsel for petitioners and the learned Assistant Government Pleader to get instructions on this point. All the learned counsel admit that the Survey Act is mainly intended for survey of Government lands and Estate lands and that it has no application when survey is conducted by appropriate authority in respect of the plots earmarked for housing purposes. In this case, however, learned Government Pleader for Revenue has placed reliance on Memo No.3933/Q2/64-17 Revenue Department, dated 06.12.1967 issued by Government of Andhra Pradesh directing the survey and implementation of forty-one allotted plots in JHM. Therefore, on the accepted position that the survey taken up by second respondent in accordance with the said Memo was also under Survey Act and that the Government directed the District Collector, Hyderabad, to get the land demarcated and issue supplementary sethwar duly incorporating changes in revenue records, this Court holds that insofar as the survey of the plots of JHM is concerned, the Survey Act alone is applicable.

Whenever a person seeks survey, a survey officer has to issue notice to all the parties disputed and registered holders of land effected and conduct survey. Against any order passed by survey officer, Section 11 of the Survey Act provides for an appeal to an appellate authority. The Commissioner of Survey and Land Records is admittedly the appellate authority and there is no fault on the part of the third respondent

in filing appeal. As seen from the order passed by the second respondent on 08.06.2005, application made by the third respondent for survey of plot No.8 was pending before the MRO. However, survey and demarcation of plot No.8A was done in ignorance of pending application. For this reason, first respondent in his order observed that it is erroneous to demarcate the boundaries of plot No.8A when the petition for demarcation on adjoining plot No.8 is pending. Admittedly, the Deputy Director of Survey issued notices to the petitioners and third respondent. It is the case of the third respondent that after receiving notice of survey, dated 25.05.2005 on 26.05.2005, they produced necessary documents on 28.05.2005 within three days but the second respondent demarcated plot No.8A without considering those documents. This is not specifically denied in the reply affidavit. In this background, interlocutory order passed by first respondent keeping demarcation of plot No.8A is abeyance is unexceptionable. This Court, however, hastens to add that in a matter of this nature where there is a serious dispute regarding the area between to private individuals as well as Government, so as to give quietus to such disputes, survey should be conducted properly after giving notice to all persons concerned, and surveyed plot should be demarcated in the presence of concerned persons.

Having regard to the background and the above observations made by this Court, it would be proper for the first respondent to dispose of the appeal filed by third respondent as expeditiously as possible preferably within a period of eight weeks from the date of receipt of copy of this order. Insofar as W.P.No.15001 of 2006 is concerned, the MRO specifically denied the allegation of demolition and interference and therefore, this Court holds that W.P.No.15001 of 2006 is filed making allegations, which stand disproved.

In the result, W.P.No.15001 of 2006 is dismissed and W.P.No.15757 of 2005 is disposed of with a direction to the Commissioner of Survey, Settlement and Land Records, Hyderabad, as above. No costs.

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(V.V.S.RAO, J)

17.11.2006
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Note: LR copy be marked.
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[1] Sarf-e-Khas: Property of the H.E.H. the Nizam and the revenue from it which went to his privy purse. These tracts were abolished and taken over by the Government under the Abolition of Sarf-e-Khas Regulation, 1949 (See Revenue Laws of Andhra Pradesh [Telangana Area] by V.Rajaiah – First Edn., p.665)

[2] Sethwar: Register prepared after survey, containing the names of the holders of land, area and assessment, field-wise by the survey officials of a district, during original or revision survey of a village (See Revenue Laws of Andhra Pradesh [Telangana Area] by V.Rajaiah – First Edn., p.666)